

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		1474	
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on <u>08/13/2007</u>		10/035,620	12/28/2001
Signature <u>/Jamie Cameron/</u>		First Named Inventor	
Typed or printed name <u>Jamie Cameron</u>		Durga P. Satapathy	
		Art Unit	Examiner
		2617	Temica M. Beamer
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		<u>/Kyle J. Way/</u> Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		<u>Kyle J. Way</u> Typed or printed name	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>45,549</u>		<u>(720) 562-2280</u> Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>08/13/2007</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Durga P. Satapathy et al. Confirmation No.: 3860
Application No.: 10/035,620 Group No.: 2617
Filed: December 28, 2001 Examiner: Temica M. Beamer
For: SYSTEM AND METHOD FOR MULTIPLE ACCESS COMMUNICATIONS

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Introductory Comments

In response to the advisory action dated July 11, 2007 (hereinafter “the advisory action”), the Applicant requests review of the final rejections in the above-identified application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith, along with a request for a one-month extension of time under 37 C.F.R. § 1.136(a).

Claims 1-69 remain pending. Claims 1-6, 13-21, 23, 24, 26-37, 39, 41-50, 56-61, 63, 64, and 66-69 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,944,150 to McConnell et al. (hereinafter “McConnell”). (Page 2 of the final Office action dated February 26, 2007, hereinafter “the final Office action,” and the advisory action.) Claims 7-12, 22, 25, 38, 40, 51-55, 62, and 65 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McConnell in view of well-known prior art. (Page 10 of the final Office action.) The Applicant respectfully disagrees with the rejections and believes such allegations represent clear error in establishing a *prima facie* rejection under 35 U.S.C. §§ 102 and 103. The Applicant thus respectfully requests review of the rejections for at least the following reasons.

Remarks

Claims 1 and 48

Independent system claim 1 provides “a wireline switch configured to communicate using a wireline communication; a wireless switch configured to communicate using a wireless communication; and an access device configured *to engage in the wireline communication* to communicate with the wireline switch *and to engage in the wireless communication* to communicate with the wireless switch.”

(Emphasis supplied.) Independent method claim 48 provides similar limitations.

The final Office action alleges that McConnell discloses “*an access device (12) [of Fig. 1] configured to engage in the wireline communication to communicate with the wireline switch* and to engage in the wireless communication to communicate with the wireless switch (col. 6, lines 31-43).” (Page 2 of the final Office action; emphasis supplied.) The final Office action further identifies the Packet Switched Telephone Network (PSTN) 22 of Fig. 1 as the wireline switch of claims 1 and 48, and either of the mobile switching centers (MSCs) 20, 24 as the wireless switch. (Id.) The Applicant respectfully contends at least that the element 12 referred to in the final Office action does not teach or suggest the access device of claims 1 and 48.

McConnell teaches “a mobile station 12, which communicates via an air interface 14 with a base transceiver station (BTS) 16.” (Fig. 1; and column 6, lines 31-33.) However, McConnell does not teach or suggest that the mobile station 12 engages in wireline communications to communicate with the PSTN 22. Instead, only wireless communications occur between the mobile station 12 and the BTS 16. The resulting information received at the BTS 16 is then reformatted and transmitted as wireline communications to a base station controller (BSC) 18 and an MSC 20 before being transferred to the PSTN 22. (See column 6, lines 31-55.) In other words, *the mobile station 12 itself does not engage in wireline communication* with the PSTN 22.

In response, the advisory action states that “[t]he claims do not require direct communication between the mobile/access device and the switches.” (Continuation sheet of the advisory action.) However, claims 1 and 48 *do* indicate that the access device engages in both the wireline communication and the wireless communication. As shown above, the MS 12 of McConnell does not itself engage in *any* wireline communications,

as it is only capable of wireless communication over the air interface 14. Thus, since each of independent claims 1 and 48 provide or describe an access device engaging in *wireline* communication, the Applicant contends that McConnell does not teach or suggest such an access device, and such indication is respectfully requested.

Claims 27, 36, and 67

Independent claims 27, 36, and 67 stand rejected in the final Office action under similar reasoning to claims 1 and 48, as described above. (Please see pages 5, 7, and 9 of the final Office action.) The Applicant respectfully disagrees with the rejections, as discussed at pages 14-16 of the most recent response dated April 26, 2007, hereinafter “the most recent response.” Therefore, based on the arguments provided in the most recent response, the Applicant respectfully asserts that claims 27, 36, and 67 are allowable in view of McConnell, and such indication is respectfully requested.

Claims 2-26, 28-35, 37-47, 49-66, 68 and 69

Claims 2-26 depend from independent claim 1, claims 28-35 depend from independent claim 27, claims 37-47 depend from independent claim 36, claims 49-66 depend from independent claim 48, and claims 68 and 69 depend from independent claim 67, thus incorporating the provisions of their respective independent claims. Thus, the Applicant asserts that these claims are allowable for at least the reasons provided above in support of claims 1, 27, 36, 48, and 67, and such indication is respectfully requested.

The Applicant further contends respectfully that claims 2, 3, 49, 50, and 68 are allowable aside from their dependency on their associated independent claims, and such indication is respectfully requested. (Please see the discussion at the last paragraph of page 16 and the first full paragraph of page 17 of the most recent response.)

Further regarding claims 7-12, 22, 25, 38, 40, 51-55, 62, and 65, which stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McConnell in view of well-known prior art, the Applicant notes that McConnell may be cited as a reference only under 35 U.S.C. § 102(e). (Please see the continuation sheet of the advisory action.) Further, both the present application and McConnell are assigned to Sprint Communications Company L.P. (Please see the front page of McConnell. The

assignment of the present application is recorded at Reel 012443, Frame 0584.) Thus, the Applicant respectfully asserts that McConnell is disqualified as a reference under 35 U.S.C. § 103(a) for the present application due to the restrictions of 35 U.S.C. § 103(c)(1) and MPEP § 2146, which indicate that subject matter available as a reference only under 35 U.S.C. § 102(e) “shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” Therefore, such indication of disqualification of McConnell is respectfully requested.

Conclusion

Based upon the above remarks, the Applicant respectfully requests reversal of the 35 U.S.C. §§ 102 and 103 rejections of claims 1-69.

The Applicant hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith, as well as the fee under 37 C.F.R. § 1.17(a)(1) for a one-month extension of time. The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765 accordingly.

Respectfully submitted,

Date: 08/13/2007

/Kyle J. Way/

SIGNATURE OF PRACTITIONER

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